IOWA DEPARTMENT OF
INSPECTIONS & APPEALS

THOMAS J. VILSACK
GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

STEVEN K. YOUNG, DIRECTOR

September 22, 2006

National Indian Gaming Commission
Attn: Penny Coleman, Acting General Counsel
1441 L. Street NW, Suite 9100
Washington, D.C. 20005

Re: Comments on Electronic or Electromechanical Facsimile Definition

Dear Ms. Coleman:

Thank you for your letter of June 9, 2006 seeking comments from the State of Iowa on the proposed regulations referenced above. As the Director of the Iowa Department of Inspections and Appeals, I am authorized to enter into and implement agreements or compacts between the State of Iowa and Native American tribes located in our state. Therefore, Governor Vilsack has asked me to make the following comments on his behalf. Please accept this letter as written comments on these regulations.

In general, the proposed rule represents an improvement over the current rule. The ability to distinguish between "aids" and "facsimiles" remains an important issue to the State of Iowa, as the latter devices, along with "slot machines of any kind," are by definition Class III gaming devices requiring a Tribal-State Compact for their lawful use on Indian lands. 25 U.S.C. sections 27030(7)(B)(ii). In the enactment of the Indian Gaming Regulatory Act, Congress expressly recognized the States' significant governmental interests in the conduct of Class III gaming and expressly provided that an electronic gambling device that is a facsimile of a game of chance constitutes Class III gaming activity. See 25 U.S.C. section 2710(d)(6) and 15 U.S.C. sections 1171-1178.

There are two substantive provisions in the proposed rule that should be reviewed and revised. First, in proposed § 502.8 (b)(1), the definition suggests that a bingo, lotto or other game similar to bingo is an electronic or electromechanical facsimile when that electronic format incorporates *all* of the fundamental characteristics of the game, instead of simply incorporating the fundamental characteristics of the game. The word "all" should be eliminated, both to be consistent with subparagraph (a) (which does *not* use the word "all"), and because it overly restricts the definition; under the proposal, if a game played on a device incorporates anything less than "all" of the fundamental characteristics of a game, it may be argued that such a game does not meet the definition of "electronic or electromechanical facsimile."

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Second, the proposed definition at section 502.8(b)(1) continues to make a distinction that rests upon "broadening participation among competing players," a distinction that is not called for by the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. §§ 2701-21, and does not serve a useful purpose here. The State of Iowa recommends dropping the "rather than broadening participation among competing players" language from the definition. The critical distinction between a Class III device and a Class II device rests on whether a player of a Class II device is playing with or against the machine that significantly applies an element of chance to win or lose. Nothing within the IGRA suggests that a Class III device is acceptable for Class II gaming simply because multiple players are engaged. Deletion of this proposed language ensures clarity on this point.

Thank you for your consideration.

Sincerely,

STEVEN K. YOUNG
Director